

Dipan (Migration) [2018] AATA 3120 (9 May 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mrs Dafrosa Doartje Dipan

CASE NUMBER: 1717514

DIBP REFERENCE(S): BCC2016/881000

MEMBER: Grant Chapman

DATE: Wednesday 9 May 2018

PLACE OF DECISION: Adelaide

DECISION: The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:

- cl.820.211 subclause (2)(a) of Schedule 2 to the Regulations
- cl.820.221 subclause (1)(a) of Schedule 2 to the Regulations]

1. Statement made on 09 May 2018 at 5:30pm

CATCHWORDS

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – Genuine spousal relationship – Marriage certificate – Photographs of wedding – Cultural wedding ceremony – Applicant's financial dependence on sponsor – Joint bank account – Transfer of sponsor's assets to Australia – Address for delivery of mail – Detailed description of household – Living in isolation on farmland – Limited social interaction with others – Regular church attendance – Met through online website – Detailed knowledge of family circumstances – Decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A, Schedule 2 cls 820.211, 820.221

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision of a delegate of the Minister for Immigration on 28 July 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s. 65 of the *Migration Act* 1958 (the Act).
3. The applicant applied for the visa on 2 March 2016 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211, subclause (2)(a) because they did not accept that the applicant and the sponsor were in a genuine spousal relationship.
5. The applicant and sponsor appeared separately and then together before the Tribunal, on 2 May 2018, to give evidence and present arguments.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether the applicant and her sponsor are in a spouse relationship as defined by section 5F of the Act.
8. In determining the applicant's claims, the Tribunal must first make findings of fact on material matters in dispute. This may involve an assessment of credibility and in so doing, the Tribunal is aware of the need and importance of sensitivity to the circumstances and difficulties applicants may face before the Tribunal, related to their particular situation.
9. The applicant relies on the written submissions and supporting evidence provided to the Tribunal and previously to the Department, together with the oral evidence the applicant and sponsor gave at the Hearing.

Whether the parties are in a spouse or de facto relationship

10. Clauses 820.211 subclause (2)(a) and 820.221 subclause (1)(a) require that at the time the visa application was made and at the time of the decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor, who is an Australian citizen.
11. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects, the nature of the parties' household

and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

12. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The applicant and sponsor provided to the delegate and to the Tribunal a certified copy of their Commonwealth of Australia Official Certificate of Marriage, registration number 20192234, confirming their marriage on 22 November 2015 at the Most Holy Redeemer Church, Murray Bridge, according to the Rites of the Roman Catholic Church, solemnised by Rev John Damian Herd. Photographs of their wedding accompanied this document, together with photographs of a subsequent Indonesian cultural wedding which took place in December 2015 at Sintesa Peninsula Hotel, Manado, Indonesia. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

13. In forming an opinion about whether the applicant and her sponsor are in a spousal relationship, consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects, nature of the applicant's and sponsor's household arrangements and the nature of their commitment to each other, as set out in Migration Regulation r.1.15 A, which is attached to this decision.
14. In examining the documentary evidence tendered and the verbal evidence given at the Hearing, the Tribunal has considered all aspects of the relationship.
15. The applicant lodged a valid application for a Class UK subclass 820, Partner (Temporary) visa and Partner (Residence) (Class BS) (subclass 801) visa on 2 March 2016 on the grounds of being in a spousal relationship with an Australian citizen.

16. Background

17. As confirmed by identity documents, the applicant was born on 1 December 1964 in Lembean, Indonesia. She stated that her father and grandfather had been owners of a successful coconut growing and processing business, while her mother, who is still alive aged 78, was a Teacher/Director of a Catholic school and in later life has been the owner of a nursing home in the Manado region of Indonesia.
18. In her early adult life, the applicant trained, qualified and worked as a nurse. In more recent years, she has been the successful operator of a K K Indonesia multilevel health product marketing business, having reached Director level in the overall structure of K K Indonesia, as well as owning/operating a restaurant, including the restaurant property. She declared her business/residential assets in Indonesia to be worth approximately A \$1 million and that she is in the process disposing of these assets.
19. The applicant was married previously on 22 July 1988 to Agustinus Reffly Jeffry Sengkey from whom she was separated in 2009 and divorced in 2013, including an annulment from the Roman Catholic Church.
20. She has three adult children, aged from 23 to 29, resident in Indonesia, all of whom work in the applicant's K K Indonesia multilevel health product marketing business.
21. The sponsor was born in Broken Hill, Zambia, 22 April 1957, migrated to Australia with his parents in 1965 and became an Australian citizen on 29 July 1987. For many years, he has

worked as a ferry operator at Purnong, South Australia, on the River Murray and also owns a small farm of 100 acres near Copeville, in the Murray Mallee, where he lives.

22. The sponsor has never been married previously but has been in two long-term de facto relationships, the first from 1983 to 2003 and the second from 2005 to 2013. There are no children from either of these relationships.

23. *Financial aspects of the relationship*

24. The Tribunal notes that the delegate stated that the applicant and sponsor had provided insufficient evidence regarding the various items relevant to the financial aspects of the relationship. However, the Tribunal is satisfied that the combination of documents and verbal evidence is sufficient for it to make a judgement about the financial aspects of the relationship.

25. *Joint ownership of assets:* A motor vehicle registration certificate of 3 May 2017 and insurance policy of 9 June 2017 for the same vehicle, show that a 1998 Mitsubishi Magna motor vehicle is owned jointly by the applicant and her sponsor. To date, this is the only asset held in joint names.

26. *Joint liabilities:* The applicant and sponsor each have credit/debit cards attached to the joint account they have established at the People's Choice Credit Union. The Tribunal saw relevant bank statements and each credit/debit card, along with withdrawals from the account from transactions on both cards.

27. *Extent of pooling of financial resources:* As the only current income earner, the sponsor is bearing the cost of living and related financial costs of the relationship. The applicant has sought employment, which she has found impossible to obtain without a long-term residential visa.

28. The sponsor earns A\$2166 after tax, per fortnight, as a ferry operator on the Purnong ferry. He has modest additional income from crops grown by a sharefarmer on his small, 100 acre farm. He transfers funds from his own account regularly into both the joint account held by the applicant and sponsor and also to the applicant's personal account at the People's Choice Credit Union. The Tribunal concludes that this demonstrates an aspect of the strength of the relationship between the applicant and sponsor, in the nature of the trust which the sponsor is putting in the applicant and her commitment to the relationship. This may be regarded as a more significant pointer to the relationship than if each person was contributing equally financially to the relationship and drawing equally financially from it.

29. *Any legal obligations owed to the other party:* The sponsor is a member of the Statewide Super superannuation fund and on 15 August 2017 made the applicant the sole beneficiary of his superannuation entitlement, in the event of him predeceasing the applicant. The applicant and sponsor each have made Wills naming the other as the sole beneficiary of their estate, in the event of their death. In the event that the beneficiary predeceases the testator, each Will provides that their respective estates will be shared 25 per cent each between the applicant's three children and the sponsor's sister.

30. *Any sharing of day-to-day household expenses:* As in paragraph 24 above, the sponsor currently is the principal financier of the relationship. The joint account, via the credit/debit cards attached to it, is used to pay household expenses, most notably supermarket purchases, incurred consequent on the shared relationship. Apart from day-to-day living expenses, major expenses incurred have been two shared return trips to Indonesia by the couple.

31. *Other financial matters:* As in paragraph 16 above, the applicant has assets in Indonesia of approximately A\$1 million, which she is in the process of selling. When these funds are realised, the applicant stated her intention to bring these funds into the joint relationship, including the possible purchase of a house and business in Murray Bridge for the couple to share. Similarly, if the applicant obtains a spouse visa, it is the intention of the sponsor to transfer his farming property and its residence into joint names.
32. *Conclusion:* The Tribunal places moderate weight on the cumulative evidence in support of the financial aspects of the relationship. The applicant and sponsor were candid in acknowledging that financially, to date, the relationship is one of the applicant being financially dependent upon sponsor, rather than one of any degree of financial interdependence. The Tribunal accepts the validity of the circumstances giving rise to the situation and takes as credible the expressed intent of the couple to enter into a substantial sharing of their respective financial resources when the applicant succeeds in liquidating her assets in Indonesia. The Tribunal accepts that the current financial aspects of the relationship are indicative of a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship and that they are living together on a permanent basis.
33. *The nature of the household*
34. *Any joint responsibility for the care and support of children:* As described in paragraph 18 above, the applicant has three adult children, who are therefore, independent of her, albeit they are working in the multilevel marketing business which she established. The sponsor does not have any children.
35. *The living arrangements of the applicant/sponsor:* The delegate took issue with the fact that the only document provided by the applicant and the sponsor which contained a residential address was their Marriage Certificate, while their Credit Union account statements, superannuation printout, car registration and personal statements all gave a Post Office Box address only. The delegate therefore gave no weight to any of these documents as being evidence for the applicant and sponsor having established a joint household in which they are living together. In the opinion of the Tribunal, this demonstrates substantial ignorance on the part of the delegate as to the nature of life in rural and regional Australia. The applicant's small farm and residence is located in a remote location near Copeville, twenty kilometres from the nearest bitumen road. Copeville is a very small rural town with few services. According to the last census, in the whole Copeville area the population was 34. Quite simply, there is no mail delivery to Copeville. That is why the mailing address for the sponsor and now his wife, the applicant, is a Post Office Box at Nildottie on the River Murray.
36. Apart from their own statements, which the Tribunal accepts as credible, Carolyn Ann Roesler, in a Form 888, has declared that she has assisted the sponsor in managing livestock on his farm, resulting in frequent contact with the applicant and the sponsor and that the applicant has embraced life on the farm. Under questioning at the Hearing, the applicant was able to give a detailed description of the farmhouse in which she is living with the sponsor. The accuracy of her description was confirmed by the sponsor's own separate description given at the Hearing. The Tribunal accepts that the applicant and sponsor have been living together at the Copeville farmhouse since the applicant's arrival in Australia prior to their wedding. The only exception to that has been a two-month trip to Indonesia by the applicant, unaccompanied by the sponsor, in the middle of 2016, when she attempted to sell her restaurant business and property, along with her substantial residence and other land. However, she was unsuccessful in obtaining the prices sought for each and is still finalising the liquidation of those assets and transfer of funds to Australia.

37. *Any sharing of responsibility for housework:* Apart from the written statements, under separate examination during the Hearing, the applicant and sponsor gave consistent descriptions of their shared responsibilities in the home. In the absence of employment, the applicant spends most of her time at home when the sponsor is at work and undertakes cooking, dishwashing, housecleaning and laundry responsibilities, as well as looking after the chickens on the farm. The sponsor is responsible for maintaining the exterior areas of the house, such as lawn mowing and general maintenance, as well as maintenance of the shared motor vehicle. The couple undertake shopping responsibilities together in Murray Bridge, weekly on Wednesdays.
38. *Conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the household being one which demonstrates the relationship between the applicant and sponsor as being a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship and that they living together on a permanent basis.
39. *The social aspects of the relationship*
40. *Whether the persons represent themselves to other people as being married to each other:* The Tribunal is satisfied that since their marriage on 22 November 2015, the applicant and the sponsor have continuously represented themselves to others as being married to each other. Living in isolation, on the sponsor's farming property, provides only limited opportunity for social interaction with others. However, the social activities in which they do engage are undertaken together. Most significant of these is regular attendance at the Murray Bridge Roman Catholic Church. Indeed, their wedding ceremony was conducted after a Sunday service at the church and the congregation were invited to attend the ceremony and subsequent wedding lunch in the church hall. In December 2015, they travelled to Indonesia for a further cultural wedding ceremony attended by some 200 people. Photographs confirm both events.
41. *The opinion of friends and acquaintances about the nature of the relationship:* The Form 888 provided by Rev John Damien Herd, priest at the Most Holy Redeemer Roman Catholic Church in Murray Bridge is strongly supportive of the relationship between the applicant and sponsor being genuine, continuing and of permanent intent. When the sponsor contacted Rev Herd early in 2015 to say that he wanted to marry the applicant, Rev Herd undertook considerable investigation into the applicant through the Roman Catholic Church in Indonesia, given her previous divorce. He received very favourable comments from church personnel in Indonesia. After the applicant arrived in Australia at the end of September 2015, he conducted marriage preparation counselling with them during the ensuing two months before their wedding. This statement also confirms their regular attendance as a couple at the church, since their wedding.
42. The Form 888 submitted by Carolyn Ann Roesler, to which reference is made in paragraph 30 above, confirms her belief that the relationship between the couple is genuine. She confirms that she and her partner, who is a work colleague of the sponsor, have spent social time together with the couple and that they are active in the life of the Murray Bridge Roman Catholic Church.
43. *Any basis on which the persons plan and undertake joint social activities:* As identified in paragraph 33 above, geographic isolation limits the extent of the couple's social activity. Apart from church involvement, already identified, the applicant and sponsor have undertaken numerous trips together around rural and regional South Australia, as confirmed by photographs provided to the Tribunal. As confirmed by booking details and boarding passes, they also have made two trips together to Indonesia since their marriage, including

one in which they undertook the cultural wedding ceremony and another during which they travelled around Indonesia but also spent time interacting with the applicant's family.

44. *Conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the household as being one in which the relationship between the applicant and sponsor exhibits a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship that they are living together on a permanent basis.
45. *The nature of the persons' commitment to each other*
46. *The duration of the relationship:* The applicant and sponsor first came into contact with each other in January 2014 through the introduction website "Indonesian Cupid," after their long-standing previous relationships had ended in 2013. The sponsor was looking for a potential partner on similar Australian sites and was directed to the Indonesian site. From this initial contact, the relationship developed through shared Facebook messages, personal email interaction, Skype video conversations and telephone conversations. By April 2014, the sponsor told the Tribunal at the Hearing that he had decided he wanted to marry the applicant, which he expressed to the applicant and which she reciprocated in May 2014, after considering the matter on her return from a KK Indonesia business trip to Korea. At that point, the sponsor approached Rev John Herd, requesting that he assist in bringing the marriage to fulfilment.
47. Although they had not met face-to-face at this point, it is reasonable to conclude that the relationship had commenced by May 2014 and continued as Rev Herd made his investigations during the following 12 months and gave his preliminary blessing to the proposed marriage. The first face-to-face meeting of the couple was when the applicant arrived at Adelaide Airport on 22 September 2015. Following the applicant's arrival in South Australia, the couple undertook a schedule of marriage preparation counselling with both Rev Herd at Murray Bridge and Father John Do in Adelaide and the date for the wedding was agreed.
48. The Tribunal accepts that this relationship has had a duration, thus far, of four years.
49. *The length of time during which the persons have lived together:* Apart from the applicant's two-month solo trip to Indonesia in mid-2016 to attempt to wind up her business and property affairs, the Tribunal accepts that the applicant and sponsor have lived together at Copeville, South Australia, since September 2015.
50. *The degree of companionship and emotional support the persons draw from each other:* The responses provided separately by the applicant and sponsor during the Hearing confirmed to the Tribunal the considerable companionship and emotional support each provides to the other. During probing questioning, each demonstrated detailed knowledge of the other's family including parents, siblings and their children and in the case of the sponsor, knowledge on his part of the applicant's children. It was evident that they had discussed each other's families as the relationship developed. They were attracted to each other as they communicated via technology before meeting in person, having been able to make an early assessment of each other's suitability as a marriage partner through the information which is provided on the "Indonesian Cupid" system. Meeting personally in September 2015 confirmed their assessment of each other. In the Hearing, separately they expressed their love for each other. They have a good connection and are comfortable in each other's company. The applicant cited the care given to her by the sponsor during a bout of influenza, while the sponsor compared the generally peaceful nature of their relationship compared with his previous relationships which were up-and-down with elements of chaos from the

commencement and the applicant's concern to make him feel socially comfortable during their visits to Indonesia.

51. *Whether the persons see the relationship as a long-term one:* Under separate questioning, the applicant and sponsor gave specific and consistent responses regarding their intentions for the future. It was clear to the Tribunal that they had engaged in serious discussion with each other about their plans. Examples were that after the applicant succeeds in liquidating her assets in Indonesia and bringing the funds to Australia, they expect to move to Murray Bridge, purchase a house and the applicant would seek registration to resume her nursing career, part-time, while also establishing a restaurant business. Meanwhile, the sponsor would continue working as a ferry operator, until such time as the restaurant business could support his full-time involvement. They also proffered travel plans
52. The Tribunal concludes that they have a continuing commitment to a long-term spousal relationship.
53. *Conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the persons' commitment to each other as being one where the relationship between the applicant and sponsor exhibits a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship in that they have lived together on a permanent basis.
54. In summary, the applicant and her sponsor have been in a continuous relationship since May 2014, have lived together continuously since September 2015. During that time their financial relationship has been appropriate for their current situation, they have shared household responsibilities, while their social interaction and travel has been conducted openly as husband and wife. Although they have a limited circle of friends, they are accepted by them as being in a genuine relationship. Significantly, the local priest has been involved in the development of their relationship and accepts it as genuine, as do those with whom they interact regularly at church services.
55. For the above reasons, having carefully considered each of the prescribed factors under s.5F (2) (b)–(d), the Tribunal is satisfied that at the time of the application and at the time of the decision, the visa applicant and her sponsor were in a genuine and continuing relationship and had a mutual commitment to a shared life together to the exclusion of all others and live together, or not separately and apart on a permanent basis.
56. On the basis of the above, the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of the decision.
57. Therefore, the applicant meets cl.820.211(2)(a) and cl.820.221(1)(a).
58. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

59. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:
- cl.820.211 subclause (2)(a) of Schedule 2 to the Regulations
 - cl.820.221 subclause (1)(a) of Schedule 2 to the Regulations

- Senior Member

Grant Chapman

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).